

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
<i>ex rel.</i> , JONATHAN D’CUNHA, M.D.,)	Civil Action No. 19-495
)	
Plaintiff,)	
)	District Judge Cathy Bissoon
v.)	
)	
DR. JAMES D. LUKETICH,)	<i>(Electronically Filed)</i>
UNIVERSITY OF PITTSBURGH)	
MEDICAL CENTER, AND)	
UNIVERSITY OF PITTSBURGH)	
PHYSICIANS,)	
)	
Defendants.)	

MOTION FOR VOLUNTARY DISMISSAL WITH PREJUDICE

NOW COMES Plaintiff the United States of America (the “United States”),¹ by and through its undersigned counsel, and pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure and 31 U.S.C. § 3730(c)(2)(A), and hereby moves this Court to dismiss the United States’ Complaint in Partial Intervention, with prejudice as to the United States and Relator Jonathan D’Cunha, M.D. (“Relator”), as well as any non-intervened claims, with prejudice as to Relator, and in support thereof states as follows:

¹ Before concluding this case, the United States must correct one prior representation to the Court.

In its August 4, 2021 response to the Defendants’ Motion to Extend the Seal and Conduct Discovery (which was filed under seal), the United States represented (in Footnote 1), that “only UPMC ... provided the USAO with the transcript and recording of the supposed ‘Illegal Wiretap’” and that “[n]o other source provided the United States (or its agents) with a copy of any such transcript or recording.” In recent months, however, the undersigned learned that Dr. Lara Schaheen did, in fact, provide a copy of the transcript and recording to FBI, and that UPMC only provided a copy of the transcript (and not any tape) to the USAO. (UPMC has represented that it only received the recording from the FBI in or about August of 2022.) The undersigned apologizes for the prior misstatement.

1. On April 30, 2019, Relator filed an initial *qui tam* False Claims Act (“FCA”) Complaint against Defendants James L. Luketich, M.D., University of Pittsburgh Medical Center, and University of Pittsburgh Physicians (collectively, “Defendants”). (Dkt. No. 2.)

2. On July 26, 2019, Relator filed a First Amended Complaint against Defendants. (Dkt. No. 7.)

3. On September 2, 2021, the United States filed a Complaint in Partial Intervention against Defendants (the “Government’s Complaint”). (Dkt. No. 66.)

4. On September 29, 2021, Relator filed a Motion for Voluntary Dismissal of Non-Intervened Claims, in which he requested that the Court “voluntarily dismiss without prejudice the claims in his First Amended Complaint in which the United States has not intervened, except for Relator’s separate claims under 31 U.S.C. § 3730(d) for attorney fees, costs and expenses and a Relator’s share, which he does not seek to dismiss.” (Dkt. No. 76 at 1.)

5. On October 12, 2021, the Court entered an Order granting Relator’s Motion for Voluntary Dismissal of Non-Intervened Claims, and dismissed the non-intervened claims without prejudice. (Dkt. No. 80.)

6. On June 30, 2022, the Court denied Defendants’ Motion to Dismiss and suggested that the Parties “explore” an “amicable resolution.” (Dkt. No. 116 at 5.)

7. Since that date, the Parties have taken the Court’s suggestion, and the United States and Defendants reached such an “amicable resolution” through a February 23, 2023 Settlement Agreement (the “Agreement”).

8. As a result, and in accordance with the terms of the Agreement, the United States now moves this Court to dismiss:

- a. The Government's Complaint, with prejudice as to the United States and to Relator; and
- b. Relator's First Amended Complaint, and any and all non-intervened claims, with prejudice as to Relator, except that Relator's claim under 31 U.S.C. §3730(d) for attorney fees, expenses, and costs is not dismissed and is expressly reserved, and the Court shall retain jurisdiction over this claim as provided in paragraph 9.

9. The Court shall retain jurisdiction over the Relator's claim under 31 U.S.C. §3730(d) for attorney fees, expenses, and costs, and Relator will file a fee petition on or before May 15, 2023, unless the Relator notifies the Court prior to that date that the claim has been resolved.

10. Defendants have informed the undersigned, through their respective counsel, that they each consent to this request.

11. The United States has notified Relator of this Motion, in accordance with 31 U.S.C. § 3730(c)(2)(A), and Relator also consents to the relief requested herein.

WHEREFORE, the United States respectfully requests that the Court enter the attached, proposed Order dismissing the Government's Complaint, with prejudice as to the United States and Relator, and any and all non-intervened claims, with prejudice as to Relator, except that the Relator's claim for attorney fees, expenses, and costs is not dismissed and is expressly reserved.

Respectfully submitted,

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/s/ Adam Fischer
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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2023, the foregoing was electronically filed with the Clerk of Court using the ECF system, which will provide notice by email to all counsel of record.

/s/ Adam Fischer
ADAM FISCHER
Assistant U.S. Attorney